

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL Nos. 95, 96, 97, 98, 99 of 2000

in

SPECIAL CIVIL APPLICATION Nos. 10352, 10363, 10364,
10365, 10367 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

B.A. MEWADA

Versus

DIRECTOR-GOVT PRINTING AND STATIONERY DEPARTMENT

Appearance:

MR PJ MEHTA for Appellant

MR.V.M. PANCHOLI A.G.P. for Respondents

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.P.BUCH

Date of decision: 17/02/2001

COMMON C.A.V.JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

1. Could the Government while exercising its powers in altering the conditions of service, upgrading the civil post to next higher class, deny the time-scale of such class or not, is the heart and theme of this group of five appeals, at the instance of employees working in the Directorate of Government Printing and Stationary Department, Government of Gujarat, in the capacity of packers and Checkers, who have assailed the common judgment of the learned single Judge passed on 8.2.2000, in group of five writ petitions under Article 226 of the Constitution, whereby, the writ petitions came to be allowed quashing the judgment and order of Gujarat Civil Service Tribunal in appeals.

2. A few relevant and material facts giving rise to this group of five Letters Patent Appeal, at the instance of the employees may be highlighted, at this stage, so as to appreciate the merits of the appeals and the challenge against them. The entire controversy started on account of the Government Order dated 18.12.1997 pursuant to the notification of the Government of Gujarat. In Industries and Mines Department, dated 10th May, 1996. the appellants are the employees and the respondents are the State Authorities and since common questions are involved and common order of the learned single Judge is assailed before us, in this group of appeals, against the respondents, they are being disposed of by this common judgment, and they are, hereinafter, referred to as "employees" and the "State" for the sake of convenience and brevity.

3. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of all the rules made earlier, the Government of Gujarat, made rules to provide for regulating recruitment to the post of packer, drawer and the post of packing checker, in Gujarat Subordinate Service Class III, in the Government Printing and Stationary Department. The Rules are known as the "the Packer, Drawer and Packing Checker in the Government Printing and Stationary Department Recruitment Rules, 1996" (Rules for short). The said resolution, stipulates and provides various terms and conditions for the said upgraded posts in the Government Printing and Stationary

Department.

4. Pursuant to the aforesaid rules, the impugned order of the Government came to be issued on 18.12.1997. Under this order the Government in Government Printing and Stationary Department has clarified that the posts of Packer and Packing Checker now fall in Class III Government Service and therefore the persons belonging to this cadre will be required to retire from Government Service on completion of 58 years.

5. The appellants original petitioners felt aggrieved by the said order dated 18.12.1997 and therefore they preferred appeals before the Gujarat Civil Services Tribunal at Gandhinagar. By an order dated 13.11.1998, the learned Tribunal was pleased to allow all the appeals of the appellants above-named and was also pleased to quash and set-aside the impugned order dated 18.12.1997. The tribunal was further pleased to direct the present respondent to implement its order immediately and one of the appellants who was about to complete 58 years of age was directed not to retire on completion of 58 years of age. The respondent above named felt aggrieved by the said judgment and order of the learned tribunal and therefore preferred Special Civil Applications being Special Civil Application Nos.10365 of 1999, 10364 of 1999, 10363 of 1999, 10352 of 1999, 10367 of 1999. The learned single Judge who heard the aforesaid writ petitions was pleased to allow the aforesaid petitions and to quash and set-aside the aforesaid judgments and orders of the learned Tribunal. The present appellants felt aggrieved by the said judgment and order of the learned single Judge dated 8.2.2000, and have therefore preferred this Letters Patent Appeal under Clause 15 of the Letters Patent, mainly on the ground that the State Government could not frame rules so as to retrospectively apply to the employees already in Service. It has also been contended that the present appellants belong to Class IV service and therefore they could not be placed in Class III service. It is further contended here that even if the State Government wanted that the appellants be placed in Class III service then the Government should have directed the fixation of their salaries permissible to Class III service with effect from 1.1.1986.

6. The aforesaid appeals having been admitted and having been heard finally, the learned Advocate for respective parties have extensively and elaborately addressed us at length. They have also taken us through

the records of this appeal including affidavit and documents produced on records.

7. The learned advocate for the appellant-employees has argued at length that the State Government could not frame the rules being Packer, Drawer and Packing Checker Recruitment Rules, 1996 (Annexure II Page 13) so as to apply to the present employees already in the employment of the respondent on the date on which the rules were brought into force.

8. It is very difficult on our part to accept the aforesaid argument of the learned advocate for the appellants-employees. In our opinion, the State Government has every powers and jurisdiction to frame rules so as to apply to the existing employees also. We are further of the opinion that this cannot be treated to be retrospective operation of the rules. If the rules are otherwise illegal or unreasonable they can certainly be quashed and set-aside. However, if the rules are not found to be unreasonable or irrational then they cannot be quashed and set-aside on the ground that they are made applicable to the existing employees also.

9. It would be worth while to refer to a decision of the Honourable the Apex Court in the Case of K.Nagraj Vs. State of A.P. reported in AIR 1985 SC 551; wherein similar view has been taken and it has been held that the rule changing the age of superannuation from 58 to 55 years is neither arbitrarily or irrational. Therefore the said rule was upheld by the Honourable the Apex Court in the aforesaid matter. Almost similar view was taken by the Honourable the Apex Court in Government of A.P. Vs. Saiyed Yousuddin Ahmed reported in (1997) (7) SC case 24. Any way we are of the clear opinion that the State Government has power to frame rules under the proviso of Article 309 of the Constitution of India. If in exercise of the said power, the state Government frames rule then it cannot be said that this rule will not apply to the existing employees. The Honourable the Apex Court has made these things clear in the aforesaid decision. Therefore we are fortified by the aforesaid decisions of the Honourable the Apex Court, when we say that State Government has power to make rule in such a way as to make them applicable to the existing employees. Superannuation age is a condition of service and the condition of service can be altered by appropriate exercise of powers. Therefore, when the powers are there and when they have been properly exercised after following due process of law then it cannot be struck down simply on the ground that they are made applicable

even to the existing employees. In our opinion the aforesaid argument advanced by the learned advocate for the employees is not acceptable.

10. The second contention raised by the learned advocate for the employees is that the appellants-employees belong to Class IV service of the State Government and they could not be converted into Class III service. We do not find any substance or force of law in this submission of the learned advocate for the appellants-employees. Again this is a matter of condition of service. The status of the employees has been upgraded by placing them in Class III service. This would indirectly upgrade even the social status of the appellants-employees. We do not find anything unreasonable or irrational when the appellants-employees have been upgraded from Class IV service to Class III service. The status in service is again a condition of service which can be altered from time to time by the State Government by invoking rule making authority derived from proviso to Article 309 of the Constitution of India.

11. The learned advocate for the appellants-employees has not been able to show as to how the aforesaid decision of the respondent state is unreasonable or irrational.

12. He has, however, argued that because of upgradation of their status, the appellants-employees would not be in a position to remain in service up to the age of 60 years and they will be required to superannuate on completion of 58 years. It is no doubt true that the Government employees in Class IV service retire on completion of 60 years whereas the Government employees in Class III, II and I service have to retire on completion of 58 years of age. It is also not in dispute that on account of upgradation, the appellants-employees will be required to retire at the age of 58 years and they will not be entitled to continue in Government Service till the completion of 60 years of age.

13. Again, as said above, this is a condition of service which can be altered from time to time and unless it is proved to be unreasonable or irrational it cannot be struck down. After all it is a policy decision of the State Government and the Government has inherent power and jurisdiction to lay down a particular policy and then to change the same from time to time. There is no allegation that the respondents have been acting in a malafide exercise of powers, even arbitrariness has also

not been alleged. In above view of the matter, we are of the opinion that the action of the respondent in upgrading the appellants-employees from Class IV service to Class III service cannot be treated to be illegal, unconstitutional, unreasonable, irrational and vulnerable on the above ground. Therefore this action cannot be struck down in this appeal. The decision of the learned single Judge on this issue also does not appear to be illegal so as to attract the power of Letters Patent Appeal under clause 15 of the Letters Patent.

14. The learned advocate of the appellants-employees has thereafter argued that even if the upgradation is upheld, the upgradation should have retrospective effect from 1.1.1986. In other words it is the argument of the learned advocate for the appellants-employees that the appellants-employees should be granted pay scales available to Class III service w.e.f 1.1.1986.

15. We are afraid, we cannot rewrite or redraft the Rules or Resolutions or Orders of the Government, in such a way as has been suggested during the course of his argument by the learned advocate for the appellants-employees. When the policy has been changed in 1996-97, then the pay scales cannot be retrospectively availed with effect from 1986. Therefore, we find that there is absolutely no force in this argument of the learned advocate for the appellants-employees.

16. The learned A.G.P. has argued on the other hand that the Government has inherent powers and jurisdiction to frame rules and to amend rules in such a way that they may be applied to the existing employees also. In support of the said argument he has relied on the two decisions of the Honourable the Supreme Court which have been referred herein above. Therefore we are of the view that the decision of the Government as a matter of policy to upgrade the status of the appellants-employees and to place them in Class III service is not found to be illegal, unreasonable or irrational.

17. At the same time it is also to be found that the Government has definite policy and scheme for fixation of pay scales. It is also to be seen that the pay scales of appellants-employees were Rs.775-1025/- in 1986. They were revised to Rs.800-1150/- w.e.f. January, 1992. Thereafter w.e.f. 1.1.1996 pay scales of the appellants-employees have been revised and fixed at Rs.2650-4000/-. As against this, pay scales available to Class III service were on higher side before 1996, the minimum pay scales in Class III service were

Rs.950-1400/- and under the R.O.P. Rules, 1998 the minimum pay scales in Class III service are Rs.3050-4590/-. There is no dispute with this fact situation.

18. This shows that while extending the benefit of pay scales the appellants-employees have not been properly considered and they have not been properly placed in the appropriate minimum pay scales applicable to Class III service in Government. When other Class III persons have been getting minimum pay scales of Rs.3050-4590/- under the R.O.P. Rules 1998, which are brought into force w.e.f. 1.1.1996, then in that event we fail to understand as to why different treatment has been extended to the appellants-employees in extending to them the pay scales of Rs.2650-4000/- w.e.f. 1.1.1996. The learned A.G.P. supporting the judgment of the learned single Judge before us could not explain as to why different treatment has been extended to the appellants-employees and as to why minimum pay scale available to other Class III service in the state have not been made applicable to these appellants-employees. We find substance in this point since, appellants-employees are now placed in Class III service w.e.f. the date of the aforesaid order. It was the duty of the respondents to extend benefit of at least the minimum pay scales available to other class III service in the state. This has not been done and no reasonable explanation has been set out by the respondents either in the affidavit or otherwise. In other words, the respondents have not been able to show as to why the aforesaid different treatment has been extended to the appellants-employees so as to adversely effect their pay scales. It has been submitted at the bar that there is no pay scale available to Class III service in the State, below the aforesaid pay scales of Rs.3050-4590/-. When the minimum pay scales in Class III service throughout the state is Rs.3050-4590/-, then there is no reason to deprive the appellants-employees from the getting said minimum pay scales atleast from the date on which they have been placed in Class III service. Therefore we are of the view that when the respondents are State Governments they are required to use equal yardstick for all its employees. Therefore while extending minimum pay scales of Rs.3050-4590/- under the R.O.P. Rules, 1998 to remaining Class III service in the state, the respondents could not legally and constitutionally deny the said pay scales to the appellants-employees on and from the date on which they have been placed in Class III service. The respondents could not discriminate between the employees in Class III service in one department and similarly

situated employees in Class III service in another department, unless the respondents come out with a reasonable explanation for different treatment to be extended to the different employees in different departments in Class III service. As said above, the respondents have not explained as to why different treatment has been extended to the appellants-employees. Such an explanation is not found from the affidavit nor it is shown from the documents. Even during the course of arguments. learned A.G.P. Mr.V.M.Pancholi was not in a position to explain the aforesaid different treatment extended to the appellants-employees. Therefore we are of the view that discriminatory treatment has been extended to the similarly situated Class III employees, i.e. the appellants-employees. This action of the respondents would clearly be hit by Article 14 and 16 of the Constitution of India. We are of a very clear opinion that the respondents, being State, is not expected to use different yardstick with respect to similarly situated persons in different departments in the state service.

19. Appellants-employees stand in Class III service, other similarly situated Class III persons are also in state service. Those other persons are getting minimum pay scales of Rs.3050-4590/-. In the same way the appellants-employees also being in Class III service are entitled to the said pay scales of Rs.3050-4590/- w.e.f 1.1.1996 or w.e.f. the date on which they are placed in Class III service. It appears from the record that the rules have been framed on 30.5.1996. However, the appellants-employees have been placed in Class III service w.e.f. 18.12.1997 which is under challenge before this court also. Therefore, the appellants-employees are entitled to get pay scales of Rs.3050-4590/- w.e.f. 18.12.1997.

20. We are of the opinion that since the appellants-employees have not been placed in Class III service w.e.f. 1.1.1986, there is no reason to direct the respondents to apply pay scale of Class III service, to them w.e.f. 1.1.1986. When the respondents have decided to treat them in Class III service with effect from a particular date, we can not compel the respondents either to continue them in Class IV service or to extend benefit of pay scales of Class III service to them w.e.f. 1.1.1986. At the same time, we are also of the opinion that, the appellants-employees should not be deprived of minimum pay scales of Class-III service w.e.f. the date on which they are placed in Class III service.

21. The dispute with respect to those recruited and appointed in accordance with the Rules of 1995 referred to above is not before us. We therefore do not make any observation with respect to them.

22. In above view of the matter we direct that the respondents shall extend the pay scales of Rs.3050-4590/- to the appellants-employees w.e.f 18.12.1997. We further direct the respondents to fix the pay of the appellants-employees in accordance with the R.O.P. Rules, 1998 in the aforesaid pay scales and then to pay to the appellants-employees on proper calculations after fixation of their salary and allowance as aforesaid. We further direct the respondents that if any amount is to be credited in Provident Fund Account as per the policy decision of the respondents then the said amount shall be credited in Provident Fund Account of the appellants-employees. At the same time if any amount is required to be paid in cash then the respondents shall pay the said amount in cash to the appellants-employees. We further direct that the respondents shall complete the aforesaid process of calculations, credit in Provident Fund Account and payment in cash after due and proper calculation within 3 months from the date of receipt of this order. We therefore allow these Letters Patent Appeals of the appellants above named to the extent indicated above. The rest of the prayers in these Letters Patent Appeals of the appellants-employees for directing the respondents to continue them in Class IV service and to extend the benefits of pay scales of Class III service to them w.e.f. 1.1.1986 stand rejected. Having regard to the facts and circumstances of the case, there shall be no order as to costs in these appeal.

(J.N. Bhatt, J.)

(D.P.Buch, J.)

/phalguni/